

6-3001-8524-2
RRCC 709/Ex-93
Ord. #5

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of White Glove
Limousine Service, Inc. for
Extension of a Certificate
of Public Convenience and
Necessity as a Regular Route
Common Carrier to Transport
Passengers and Their Baggage
From the City of Rochester
to the Rochester Airport
Over Specified Routes

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION
AND MEMORANDUM

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on February 24, 1994, in Rochester. Board Member Lyle G. Mehrkens also attended the hearing. The hearing concluded, and the record closed, on February 24.

Appearing on behalf of the Applicant, White Glove Limousine Service, Inc. was its president, Duane Wilson.

Appearing on behalf of Protestant Rochester Transportation Systems was Samuel Rubenstein, Practitioner.

Appearing on behalf of Protestant Rochester City Lines was its president Dan Holter.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the Office of Administrative

Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing

exceptions as set forth above, or after oral argument, if such is requested had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as final Order.

STATEMENT OF ISSUE

Should White Glove Limousine Service be granted an extension of its certificate of public convenience and necessity to allow it to offer regular route service between the Rochester Airport and the City of Rochester?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History

1. On November 15, 1993, White Glove Limousine Service, Inc. filed a Petition with the Minnesota Department of Transportation. The Petition sought extension of an existing certificate of public convenience and necessity to allow the carriage of passengers and their baggage from the City of Rochester to the Rochester Airport along specified routes. On November 17, the Petition was received by the Board.

2. On December 3, 1993, and weekly thereafter, the Board published notice of the Petition in its weekly calendar, setting a protest date of December 23.

3. The Board received timely Protests from Rochester Transportation Systems, Inc. and Rochester City Lines.

4. On January 21, 1994, the Board issued its Notice of Hearing in this matter, setting the hearing for February 24 in Rochester. The Notice was served on the parties, and was published in the Board's weekly calendar from that date forward to the date of the hearing. No other petitions to intervene were received, and the only parties to the hearing were Petitioner, RTS and RCL.

Need for Proposed Service

5. The Best Price Inn is located on the west side of South Broadway, which is also known as Highway 63 South, between the downtown area and the crossroads area. It is relatively small, having only 18 units. It is a drive-in/drive-out facility, meaning that most of its customers arrive with their automobiles.

6. Residents of the motel who desire to go to the airport may use either a Yellow Cab or a number of charter limousine services. Residents have

asked the manager for assistance in getting a limousine, but the manager has informed them that there is no limousine service available to the airport. The manager has contacted Rochester Transportation Systems' Airport Express and requested that it pick up a resident and take them to the airport. This service has been declined, however, because Rochester Transportation Express travels in a loop and would have to cross the street in order to pick up a passenger from the motel -- the motel is on the wrong side of the street.

7. The motel is located on the west side of South Broadway. There is a median down the center of South Broadway in that area. The RTS Airport Express vehicle, a small bus, begins at the Holiday Inn and Kahler area, travels down Second Street to the Fiksdal Motel and then turns to the south on Highway 52 to the airport. From the airport, it proceeds north on Broadway, past the Best Price Inn (the bus is traveling on the east side of Broadway at this point) into the downtown area. In order for a passenger to use the RTS bus, the passenger would either have to cross South Broadway on foot, and be picked up on the other side of the street from the motel, or the bus would have to turn in to the motel, which it is unwilling to do.

8. RTS is also unwilling to carry passengers from the airport to the motel, again because the bus would have to cross the street to deliver them to the motel itself. The motel would recommend Petitioner to its guests if the Petition were granted. It is likely that a customer from the motel would use White Glove approximately once per month.

9. The Best Price Inn does have a courtesy car which it uses to pick up and drop off persons at the Mayo Clinic, St. Mary's Hospital or Methodist Hospital. However, the owner has directed employees not to use the courtesy car to take persons to the airport.

10. Courtesy Inn is a 46-room drive-in/drive-out style motel located in the western part of the city, near Highway 52 and 17th Avenue Northwest. Most of its customers drive their own automobiles to and from the motel. The motel is the second building from the corner on a dead-end street.

11. Currently, roughly four to five guests per week arrive at the motel from the airport by cab. Yellow Cab, or a charter limousine, is the only door-to-door service available to the motel. The motel's owner and manager has called RTS/Airport Express for bus service to the airport, but has been denied. He has been told that the only way to get such service is for his guests to walk approximately one to one and one-half blocks to a point where they could board the RTS bus.

12. If this Petition were granted, the Courtesy Inn would recommend Petitioner to its guests who would like a service which is more economical than a cab or charter limousine. The motel has had no complaints from its customers about the cab service. The motel has not had any complaints about the lack of a bus service to the airport, and does not know how many people would use it if it were available. On occasion, customers have called a limousine which has come to the motel and picked them up to take them to the airport. This limousine usage occurs between two and three times a month.

Protestants

13. Rochester Transportation Systems, Inc. operates a number of different transportation services, including taxicabs, medical vans, and the RTS Airport Express. With regard to the latter service, RTS holds authority under Docket RRCC 581/E-89-66 (Order issued April 5, 1989) to operate a regular route for the carriage of passengers, their baggage and parcel express between the Rochester Airport and "hotels, motels, office buildings, convention centers, hospitals, clinics and sports arenas located in the city of Rochester." The Order provides that the service should be provided on an "on call" basis at a fixed fare.

14. RTS operates on a fixed schedule, beginning at 5:00 a.m. and ending at 5:05 p.m. It operates on a seven-day per week basis. The schedule is set forth on Ex. 15.

15. RTS provides its service using three vehicles. Two of them are 12-passenger Ford E-350 vans, while the third is a 25-passenger Ford E-350 "People Mover". Ex. 12.

16. RTS advertises its Airport Express by a brochure (Ex. 14) which is distributed to hotels, motels and other places where customers might see it as well as by advertising on radio, in newspapers, and in visitor guides such as "Rochester Area Visitor" and "Rochester Today", Exs. 17 and 16, respectively.

17. RTS is the only carrier serving the airport on a regular route basis. There are charter carriers, such as Strang, Rochester City Lines, and Rochester School Bus Company, which serve it on a charter basis, as well as a number of charter limousines which also serve the airport.

18. RTS's brochure, Ex. 14, claims that RTS "meets all flights" at the Rochester Airport, and that RTS serves "all of Rochester's . . . motels and lodging facilities". However, there are three flights arriving in the evening after 5:05 p.m. Ex. 15. In addition, RTS does not serve all motels and lodging facilities, as evidenced by the two motels who did appear and testify.

19. In 1990, RTS added a route which proceeded southerly along Broadway toward the airport, allowing it to pick up passengers from locations such as the Best Price Inn. RTS's vice president went door-to-door to the motels along South Broadway from 16th Street South to the intersection of Highways 52 and 63, in an attempt to develop ridership on this route. However, the ridership was very poor, sometimes with no people at all, and RTS stopped operating the route. The motels in this "South Broadway" area are drive-in/drive-out operations, generally small, or, in the case of the larger ones such as the

Holiday Inn South, they operate their own courtesy vans to the airport. RTS would resume serving the route if it thought there was enough riders to make it profitable. It does not believe that to be the case at the current time.

20. RTS's ridership on the Airport Express has been relatively steady the past few years. In 1992, it declined between two and three percent from 1991 levels, but then in 1993, it made up one percent of the 1991 volume. RTS is concerned, nonetheless, that if White Glove's limousines are

allowed to compete directly with RTS's vans, White Glove will divert business from RTS and cause the regular route service to be "devastated". RTS did not provide enough financial data to evaluate the credibility of this prediction.

21. Rochester City Lines operates the public bus system in Rochester. It also operates charter buses. An agent of Rochester City Lines appeared at the hearing, and cross-examined witnesses offered by others, but did not offer a testimony on behalf of Rochester City Lines. Therefore, the extent of RCL's authority, and the frequency of its service to the airport, is not well-developed in the record. However, Rochester City Lines does not deliver passengers to the airport terminal building itself. Instead, it has a route which takes it approximately one mile from the airport terminal. It will drop passengers off at a bridge or overpass, and they are then required to walk along the shoulder of a road for approximately one mile to get to the terminal building. There is no structure or other facility at the location of the bus stop where a person could call a taxi or otherwise get service to the terminal building other than by walking. It is unlikely that any person, aware of the facts, would use Rochester City Lines regular bus route to go to or from the airport.

Petitioner White Glove Limousine Service, Inc.

22. White Glove holds regular route authority between Winona and Rochester (limited to vehicles within a maximum seating capacity of 12 passengers or less), and between the Minneapolis/St. Paul International Airport and Austin, Albert Lea and Owatonna over a specified route (restricted to luxury sedan vehicles, limousines and vans with a maximum seating capacity of 12 passengers or less and further restricted against service between on-route or off-route points lying north of Faribault).

23. White Glove also has incidental charter authority from the counties of Rice and Hennepin to all points in Minnesota and return, restricted to service in luxury sedans, limousines and vans with a seating capacity of not more than 12 passengers.

24. White Glove also has charter authority to serve a large portion of the southeastern part of the state, but the exact dimensions of that authority are unknown.

25. White Glove currently has a fleet of four 1988 stretch limousines, one 1986 15-passenger van, two 1984 limousines, one 1981 limousine, and four Lincoln Town Cars. There are a total of 12 vehicles. Petitioner's vehicles

are maintained at a Rapid Oil Change shop, a Mr. Muffler shop, Adamson's Lincoln dealership and Clemen's Cadillac dealership.

26. As of November 12, 1993, White Glove had assets of \$187,000, and liabilities of \$19,500, for a net worth of \$167,500. Although it values its fleet at \$139,000, there is a debt of only \$9,500 applicable to the vehicles.

27. For fiscal year 1992, White Glove generated \$66,724 worth of passenger revenues from its regular route operations, and \$46,556 of passenger revenues from its charter operations. Its total revenues were \$113,280. Total operating expenses, including depreciation, were \$112,603, giving a net income of only \$677.

28. On June 18, 1992, Petitioner's president, Duane Wilson, pled guilty to the crime of attempting to interfere with the administration of Internal Revenue laws. He was sentenced to perform 150 hours of community service under the direction of the probation office, and was placed on probation for a term of three years. He has performed his community service, but is still on probation.

29. During portions of 1992 and late 1993, White Glove maintained and staffed counter space at the Minneapolis/St. Paul International Airport. During that time, a number of problems arose at this location. On August 5, 1992, the manager of ground transportation for the Metropolitan Airports Commission directed a letter to the Transportation Regulation Board indicating that a White Glove employee had engaged in "inappropriate behavior" and "questionable practices" by not referring a traveler to another carrier who handled a specific location from the airport. The alleged incident occurred in May of 1992. Then in late August, a similar incident resulted in a letter from White Glove indicating that any further occurrences would be cause for termination of the company's lease with the Commission. In October, the company was notified that it was in default of its lease for nonpayment of August and September rents. These were finally paid in November. However, in December, the Commission notified that company that its lease was terminated effective December 31, for failure to pay October, November and December rents. These were all paid in January of 1993. This situation resulted in another letter from the Commission to the Board. In February, the Commission wrote to Petitioner, complaining of certain behavior by Petitioner's employee. In May, the Commission again wrote to the Board, questioning whether Petitioner was serving its regular route and complaining about solicitation practices of one of Petitioner's drivers. Finally, Petitioner's May rent was not paid as of June 23, and the Commission again notified the Petitioner that it was in default of the lease. All of this is in Ex. 4. Petitioner admitted that his Minneapolis manager did cause problems, but that the individual is no longer employed by the company. The company no longer maintains a fulltime employee at the Minneapolis/St. Paul airport, but does continue to rent unoccupied space.

30. In recognition of poor management practices noted above and in previous TRB proceedings, Duane Wilson has employed an office manager. Her duties are to assure that governmental reports are filed in a timely manner and to keep abreast in changes of the rules and regulations which affect Petitioner's business.

31. In this Petition, Petitioner proposes a schedule whereby its first vehicle would depart Rochester at 5:30 a.m., and arrive at the Rochester Airport at 5:45 a.m. Its last vehicle would depart Rochester at 4:45 p.m.,

arrive at the Rochester Airport at 5:00 p.m. Nonetheless, Petitioner claims that it intends to meet "all incoming and outgoing flights." Petitioner's schedule is quite close to that of RTS, but both would appear to ignore late evening flights.

32. There is no railroad, since that would be affected by this Petition.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and therefore, the matter is properly before the Administrative Law Judge.

3. From petitioner's experience, knowledge of the regulations and financial condition, the Judge concludes that it is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4.

4. Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department.

5. Petitioner failed to demonstrate that the public convenience and necessity requires the granting of the Petition, considering the interest of the public that might be affected, transportation service being furnished by railroad, and the effect which the granting of the certificate would have on other transportation service essential to the communities who might be affected.

6. Existing services are adequate to meet the present and reasonably projected future needs sought in the Petition.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

IT IS THE RECOMMENDATION of the Administrative Law Judge to the Transportation Regulation Board that it issue the following:

ORDER

IT IS HEREBY ORDERED that the Petition of White Glove Limousine Service, Inc. for a certificate of public convenience and necessity to transport passengers and their baggage from the City of Rochester to the Rochester Airport along specified routes be DENIED.

Dated this 25th day of March, 1994.

s/ Allan W. Klein

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped Recorded; three cassettes

MEMORANDUM

Petitioner offered only two supporting witnesses, both of whom had to be subpoenaed in order to compel their attendance. Both operate small motels serving primarily drive-in/drive-out customers who have no need for service to the airport. The motels are in two different parts of the city. The two do not present an adequate showing of need so as to support a petition for service to the whole city, nor was there an adequate showing for a limited route covering any part of the city.

In the Five Star Trucking case, the court cited with approval language from a line of federal cases which held that an applicant for a certificate to serve a large geographic area need not produce evidence of need from "every village and hamlet" in the area. Instead, an applicant must demonstrate need "at numerous representative points" in the area, from which it may be presumed that the need extends throughout the area. Five Star Trucking v. Minnesota Transportation Regulation Board, 370 N.W.2d 666 (Minn. App. 1985). But that does not mean that a petitioner for a small area, such as one city, can meet its burden by showing only a small need. White Glove simply failed to demonstrate need for a regular route to serve the whole city or any part of

A.W.K.

